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14 JDS Uniphase Corporation and

15 Agility Communications, Inc.

16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA**

18 **SAN JOSE DIVISION**

19 BOOKHAM, INC., a Delaware Corporation,

Case No.: C 08-01275-RMW

20 Plaintiff,

**DEFENDANTS JDS UNIPHASE
CORPORATION'S AND AGILITY
COMMUNICATION, INC.'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

21 v.

[Civil L.R. 3-12(b)]

22 JDS UNIPHASE CORPORATION, a Delaware
corporation;

23 AGILITY COMMUNICATIONS, INC., a
Delaware corporation; and DOES 1-10,

24 Defendants.

1 Defendants JDS Uniphase Corporation (“JDSU”) and Agility Communications, Inc.
 2 (“Agility”) hereby file this Administrative Motion to Consider Whether Cases Should Be Related.
 3 In particular, Defendants request consideration of whether this case is related to a case filed by
 4 JDSU against Cyoptics, Inc. (“Cyoptics”) and Syntune AB (“Syntune”) on July 21, 2008, in the
 5 United States District Court for the Northern District of California, San Jose Division, styled as *JDS*
 6 *Uniphase Corporation v. Syntune AB and Cyoptics, Inc.* Case No. C 08-03498-JL.

7 JDSU contends that the two actions are related under Civil L.R. 3-12(a). First, both actions
 8 concern “substantially the same” property and technology as both actions involve the alleged
 9 infringement of three U.S. patents owned by JDSU—namely, U.S. Patent Nos. 6,658,035, 6,654,400,
 10 and 6,687,278. These patents pertain to tunable lasers with integrated optical amplifiers. Both cases
 11 will require in-depth understanding of the structure, function, and manufacture of these assemblies,
 12 which include tunable solid state lasers, the components within the lasers, integrated optical
 13 amplifiers, and the shape of the waveguide that is common to both the laser and amplifier—all
 14 fabricated in a common epitaxial structure.

15 Second, JDSU contends that it is likely that there will be an unduly burdensome duplication
 16 of labor and expense and the possibility of conflicting results if the cases are conducted before
 17 different Judges. As mentioned, both cases involve the same three U.S. patents owned by JDSU.
 18 Moreover, both cases involve allegations that tunable laser products manufactured or marketed by
 19 Bookham, Cyoptics, and Syntune, respectively, infringe claims of the three patents. Accordingly,
 20 JDSU contends that it would be an unduly burdensome duplication of labor and expense for these
 21 two cases to proceed before two different Judges. Moreover, given that both cases will likely require
 22 rulings on common issues, such as the interpretation of the invention claimed in the three patents,
 23 there is a likelihood of conflicting results if the two cases proceed before different Judges.

24 Accordingly, for the foregoing reasons, JDSU requests that the Court order that this case is
 25 related to the case of *JDS Uniphase Corporation v. Syntune AB and Cyoptics, Inc.* within the
 26 meaning of Local Rule 3-12.

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2 Respectfully submitted:
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4 Dated: July 25, 2008

FENWICK & WEST LLP

6 By: /s/ Heather N. Mewes
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8 Attorneys for Plaintiff
9 JDS UNIPHASE CORPORATION.
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